

In the Matter of Merchant Mariner's Document No. Z-932220 and all
other Seaman Documents
Issued to: DONALD F. ADAMS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1037

DONALD F. ADAMS

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.11-1.

By order dated 29 July 1957, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction of a narcotic drug law violation." A single specification alleges that while the holder of an outstanding Merchant Mariner's Document, on or about 17 September 1956, Appellant was convicted by a Court of Record for violation of a narcotic drug law of the State of New Jersey.

At The beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification.

The Investigating Officer made an opening statement and introduced in evidence a certified copy of the record of conviction of Appellant by the Municipal Court, City of East Orange, New Jersey, on 17 September 1956. Appellant made a statement but offered no evidence.

At the conclusion of the hearing both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved by plea. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 17 September 1956, Appellant was convicted by the Municipal Court, City of East Orange, New Jersey of violation of Title 2A:170-8, Revised Statutes of New Jersey, use of a narcotic drug,

while the holder of Merchant Mariner's Document No. Z-932220.
Appellant was sentenced to six months imprisonment.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he pleaded "guilty" in the New Jersey court for the purpose of obtaining help in rehabilitation; that he was dealt with unfairly in as much as the Coast Guard was in actual possession of his document since October 1955; that he furnished evidence in the form of a statement from the Public Health Service that he was fit for duty; and finally, that the order was too severe in depriving him of his livelihood.

OPINION

It is noted that the Appellant, in the proceedings before the Examiner, referred to a statement signed by Doctor Burton L. Steiner, USPHS, to the effect that Appellant was fit for duty. This statement was exhibited to the Examiner, but was not placed in evidence. Although such statement, standing alone, may be inadequate to warrant a finding that Appellant has been cured of narcotic addiction, it was sufficient to establish and issue on that point.

The Commandant is of the view that where action against a marine document is predicated upon conviction in a court of record for use of a narcotic drug under U.S.C. 239b(b)(1), the Examiner would be justified in receiving and considering evidence of cure as being within the intentment and spirit of the Act, a substantial right which is afforded under section 2(b)(2). Accordingly, and particularly as the Appellant was not represented by counsel, it is considered that the Examiner should have rejected Appellant's plea of guilty and entered a not guilty plea, and advised and afforded him an opportunity, by a continuance if necessary, of procuring and presenting such evidence. Appellant may, in this connection, wish to present himself to the local Public Health Service Hospital for examination, as indicated in his appeal.

ORDER

The Order of the Examiner is hereby vacated and the record remanded to the Examiner for further proceedings not inconsistent with this opinion.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 14th day of May, 1958.